

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6705 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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HARI OM ENTERPRISES THR' ITS PROPRIETOR - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PARTHIV B SHAH for Petitioner No(s).: 1.
MR MR MENGDEY, AGP FOR THE RESPONDENTS.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 27/06/2005

ORAL JUDGMENT

Rule. Learned AGP Mr.Mengdey waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 27.1.2005 passed by the Collector, Vadodara as also the order dated 29.3.2005 passed by the same authority by which the earlier order of 27.1.2005 was confirmed.

3. It is the case of the petitioner that the petitioner was issued a show cause notice dated 24.12.2004 for recovery of a sum of Rs.1,59,840/- towards breach of the provisions of section 65 of the Bombay Land Revenue Code in the construction put up by the petitioner. It is the case of the petitioner that though some construction of commercial nature had been put up by the petitioner and that therefore the respondents may be justified in levying fine under the provisions of the Bombay Land Revenue Code, the impugned order dated 27.1.2005 traveled beyond the scope of the show cause notice and such levy of fine of Rs.1,41,520/- under section 66 of the Bombay Land Revenue Code and a fine of Rs.18,320/- under section 67 of the Bombay Land Revenue Code. It is the case of the petitioner that additionally a demand of Rs.1,06,765 was raised which was not part of the show cause notice dated 24.12.2004 since the only allegation against the petitioner in the said show cause notice was of breach of section 65 of the Bombay Land Revenue Code. Learned advocate for the petitioner also

submitted that the calculations arrived at by the authorities are also not accurate. The petitioner has already paid an amount of Rs.36,005/- on 23.10.2001 and that therefore, the said figure also has to be taken into account.

4. From the impugned order, it is clear that though show cause notice was issued to the petitioner raising a demand of Rs.1,59,840/-, the respondent directed the petitioner to pay an amount of Rs.1,06,765/- in addition to the sum of Rs.1,59,840/-. It is thus clear that the final order dated 27.1.05 raises demand against the petitioner far in excess of the amount indicated in the show cause notice. The said order, therefore, cannot be sustained only on this ground. It would, however, be open for the respondents to proceed in accordance with law after issuing a fresh show cause notice and deciding the issue afresh after taking into consideration the representation that may be made by the petitioner. At this stage, however, even the petitioner does not dispute the entire liability. Considering the facts and circumstances, the petitioner shall deposit an amount of Rs.60,000/- (Sixty thousand only) which will be adjusted by the authorities while passing the final order.
5. In the result, the petition is allowed. The impugned orders dated 27.1.2005 and 29.3.2005 are set aside on

the condition that the petitioner deposits a sum of Rs.60,000/- with the Collector, Vadodara within a period of four weeks from today. Rule is made absolute to the above extent.

Direct service.

(Akil Kureshi, J.)

(vjn)